

STATE OF MICHIGAN  
COURT OF APPEALS

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GWANJUN KIM and KEESOO KIM,

Plaintiffs/Counterdefendants-  
Appellants,

v

KIA MOTORS AMERICA,

Defendant/Counterplaintiff-  
Appellee.

UNPUBLISHED

April 12, 2005

No. 260071

Kent Circuit Court

LC No. 03-008356-CZ

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Before: Kelly, P.J., and Sawyer and Wilder, JJ.

PER CURIAM.

Plaintiffs alleged that a written advertisement concerning defendant's 2003 models violated § 6(1) of Michigan's pricing and advertising act (PAA), MCL 445.356, because a photograph of a Kia Sorento EX was shown near a heading and description of the Sorrento XL. Plaintiffs did not read a footnote at the bottom of the advertisement that indicated that the depicted model was the EX model. Plaintiffs appeal as of right from the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews the grant or denial of summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Summary disposition may be granted under MCR 2.116(C)(10) if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

Plaintiff GwanJun Kim viewed a written advertisement concerning Kia's line of vehicles that was sent to his home addressed to his daughter. The advertisement includes photographs of five vehicles, including a Kia Sorento EX model. That photograph appears near a label that states "2003 Kia Sorento starting at \$20,495." To the right of the photograph is a list of specifications for "SORENTO LX" and "TOYOTA HIGHLANDER." Underneath the photograph, the advertisement states, "\$3,895 less than the Toyota Highlander\*<sup>5</sup>". In smaller print at the bottom, the advertisement states, "\*<sup>5</sup> **Kia Sorento:** EX model shown costs extra." GwanJun Kim testified that plaintiffs thought that the advertisement indicated that the LX looked like the model shown in the photograph. Plaintiffs did not read the notation at the bottom.

GwanJun Kim took the advertisement to a Kia dealership (and stated that he wanted the same vehicle shown in the advertisement. According to GwanJun Kim, the salesperson promised that he was going to sell the pictured vehicle for \$20,495.

On February 22, 2003, GwanJun Kim's son, plaintiff Keesoo Kim, completed the transaction and picked up the vehicle from the dealership without GwanJun being present. The purchase agreement was for a Sorento LX model. Keesoo Kim brought the car home approximately three weeks later, after having driven it approximately five hundred miles. GwanJun Kim subsequently took the car to the dealership and complained that it was not the correct car.

Section 6(1) of the PAA, MCL 445.356(1), provides:

A person shall not knowingly make, publish, disseminate, circulate, or place before the public an advertisement which contains a statement or representation which is untrue, deceptive, or misleading.

Except with respect to certain retail transactions involving discrepancies between marked prices and the price charged, "a person who suffers loss as a result of violation of this act may bring an individual or class action to recover actual damages or \$250.00, whichever is greater, for each day on which violations of this act have been found together with reasonable attorneys' fees not to exceed \$300.00 in an individual action." MCL 445.360(2). This Court construes the PAA with reference to the common-law tort of fraud. See *Mayhall v AH Pond Co, Inc*, 129 Mich App 178, 182; 341 NW2d 268 (1983); *Overton v Anheuser-Busch Co*, 205 Mich App 259, 261; 517 NW2d 308 (1994).

We agree with the trial court that defendant was entitled to summary disposition. Plaintiffs asserted that the advertisement was misleading because the photograph was shown next to a paragraph describing the LX. However, plaintiffs acknowledged that the information indicating that the depicted vehicle was the EX appeared in the advertisement, albeit in small letters at the bottom of the page. Because the representation on which plaintiffs rely is not misleading when the advertisement is read in its entirety, plaintiffs failed to show a genuine issue of material fact that the advertisement contained a representation that was "untrue, deceptive or misleading." MCL 445.356(1).

Moreover, plaintiffs did not show that they suffered loss as a result of the alleged violation. Pursuant to *Mayhall, supra* at 186, the frustration of expectations qualifies as a "loss" under the PAA. Although there was evidence that GwanJun Kim did not receive the vehicle that looked like what he expected, plaintiffs must suffer loss "as a result" of a violation of the act. MCL 445.360(2). As with a fraud claim, a plaintiff must establish reasonable reliance on the representation in question, and to establish that a loss was suffered as a result of the alleged violation of the PAA, plaintiffs must show that they reasonably relied on the advertisement. See *In re Jackson Nat'l Life Ins Co Premium Litigation*, 107 F Supp 2d 841, 865 (WD Mich, 2000). In this case, any loss plaintiffs suffered was the result of their failure to read the advertisement as a whole, as well as their discussions with and the representations made by the dealership. Absent reasonable reliance, plaintiffs did not suffer loss as a result of the advertisement. Therefore, defendant was entitled to summary disposition.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ David H. Sawyer

/s/ Kurtis T. Wilder